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9 **BEFORE THE**
RESPIRATORY CARE BOARD
10 **DEPARTMENT OF CONSUMER AFFAIRS**
11 **STATE OF CALIFORNIA**

12 In the Matter of the Statement of Issues Against:

Case No. 1H-2008-717

13 SAMUEL JEROME WHITE
7453 Catawba Drive
14 Fontana, CA 92336

STATEMENT OF ISSUES

15 Respondent.

16
17 Complainant alleges:

18 PARTIES

19 1. Stephanie Nunez (Complainant) brings this Statement of Issues solely in
20 her official capacity as the Executive Officer of the Respiratory Care Board of California.
21 2. On or about November 25, 2008, the Respiratory Care Board of California
22 (Board) received an application for a Respiratory Care Practitioner License from SAMUEL
23 JEROME WHITE (Respondent). On or about November 13, 2008, Respondent certified under
24 penalty of perjury to the truthfulness of all statements, answers, and representations in the
25 application. The Board denied the application on or about March 24, 2009.

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JURISDICTION

3. This Statement of Issues is brought before the Board, under the authority of the following laws. All section references are to the Business and Professions Code (Code) unless otherwise indicated.

4. Section 3710 of the Code states, in pertinent part, that “The Respiratory Care Board of California, hereafter referred to as the board, shall enforce and administer this chapter [Chapter 8.3, the Respiratory Care Practice Act].”

5. Section 3718 of the Code states: “The board shall issue, deny, suspend, and revoke licenses to practice respiratory care as provided in this chapter.”

6. Section 3750 of the Code states:

“The board may order the denial, suspension or revocation of, or the imposition of probationary conditions upon, a license issued under this chapter, for any of the following causes:

“...

“(d) Conviction of a crime that substantially relates to the qualifications, functions, or duties of a respiratory care practitioner. The record of conviction or a certified copy thereof shall be conclusive evidence of the conviction.

“...

“(j) The commission of any fraudulent, dishonest, or corrupt act which is substantially related to the qualifications, functions, or duties of a respiratory care practitioner.

“...”

7. Section 3750.5 of the Code states:

“ In addition to any other grounds specified in this chapter, the board may deny, suspend, or revoke the license of any applicant or licenseholder who has done any of the following:

“(a) Obtained or possessed in violation of law, or except as directed by a licensed physician and surgeon, dentist, or podiatrist administered to himself or herself, or

1 furnished or administered to another, any controlled substances as defined in Division 10
2 (commencing with Section 11000) of the Health and Safety Code, or any dangerous drug
3 as defined in Article 2 (commencing with Section 4015) of Chapter 9.

4 “...”

5 8. Section 3732 of the Code states:

6 “(a) The board shall investigate an applicant for a license, before a license
7 is issued, in order to determine whether or not the applicant has the qualifications
8 required by this chapter.

9 “(b) The board may deny an application, or may order the issuance
10 of a license with terms and conditions, for any of the causes specified in
11 this chapter for suspension or revocation of a license, including, but not
12 limited to, those causes specified in Sections 3750, 3750.5, 3752.5, 3752.6,
13 3755, 3757, 3760, and 3761.”

14 9. Section 3752 of the Code states:

15 “A plea or verdict of guilty or a conviction following a plea of nolo
16 contendere made to a charge of any offense which substantially relates to
17 the qualifications, functions, or duties of a respiratory care practitioner is
18 deemed to be a conviction within the meaning of this article. The board
19 shall order the license suspended or revoked, or may decline to issue a
20 license, when the time for appeal has elapsed, or the judgment of
21 conviction has been affirmed on appeal or when an order granting
22 probation is made suspending the imposition of sentence, irrespective of a
23 subsequent order under Section 1203.4 of the Penal Code allowing the
24 person to withdraw his or her plea of guilty and to enter a plea of not guilty,
25 or setting aside the verdict of guilty, or dismissing the accusation,
26 information, or indictment.”

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1 10. Section 3752.5 of the Code states:

2 “For purposes of Division 1.5 (commencing with Section 475), and
3 this chapter [the Respiratory Care Practice Act], a crime involving bodily
4 injury or attempted bodily injury shall be considered a crime substantially
5 related to the qualifications, functions, or duties of a respiratory care
6 practitioner.”

7 11. Section 3754 of the Code states: “The board may deny an
8 application for, or issue with terms and conditions, or suspend or revoke, or impose
9 probationary conditions upon, a license in any decision made after a hearing, as
10 provided in Section 3753.”

11 12. Section 492 of the Code states:

12 “Notwithstanding any other provision of law, successful completion of any
13 diversion program under the Penal Code, or successful completion of an alcohol
14 and drug problem assessment program under Article 5 (commencing with Section
15 23249.50) of Chapter 12 of Division 11 of the Vehicle Code, shall not prohibit any
16 agency established under Division 2 (commencing with Section 500) of this code,
17 or any initiative act referred to in that division, from taking disciplinary action
18 against a licensee or from denying a license for professional misconduct,
19 notwithstanding that evidence of that misconduct may be recorded in a record
20 pertaining to an arrest. This section shall not be construed to apply to any drug
21 diversion program operated by any agency established under Division 2
22 (commencing with Section 500) of this code, or any initiative act referred to in that
23 division.”

24 13. California Code of Regulations, title 16, section 1399.370, states, in
25 pertinent part:

26 “For the purposes of denial, suspension, or revocation of a license, a
27 crime or act shall be considered to be substantially related to the
28 qualifications, functions or duties of a respiratory care practitioner, if it

1 evidences present or potential unfitness of a licensee to perform the
2 functions authorized by his or her license or in a manner inconsistent with
3 the public health, safety, or welfare. Such crimes or acts include but are not
4 limited to those involving the following:

5 (a) Violating or attempting to violate, directly or indirectly, or
6 assisting or abetting the violation of or conspiring to violate any provision
7 or term of the Act.

8 (b) Conviction of a crime involving fiscal dishonesty, theft or
9 larceny.

10 (c) Conviction of a crime involving driving under the influence or
11 reckless driving while under the influence.

12 “...”

13 COST RECOVERY

14 14. Section 3753.5, subdivision (a) of the Code states:

15 “In any order issued in resolution of a disciplinary proceeding
16 before the board, the board or the administrative law judge may direct any
17 practitioner or applicant found to have committed a violation or violations
18 of law to pay to the board a sum not to exceed the costs of the investigation
19 and prosecution of the case.”

20 15. Section 3753.7 of the Code states:

21 “For purposes of the Respiratory Care Practice Act, costs of
22 prosecution shall include attorney general or other prosecuting attorney
23 fees, expert witness fees, and other administrative, filing, and service fees.”

24 16. Section 3753.1 of the Code states:

25 “(a) An administrative disciplinary decision imposing terms of
26 probation may include, among other things, a requirement that the
27 licensee-probationer pay the monetary costs associated with monitoring the
28 probation.

1 “...”

2 **FIRST CAUSE FOR DENIAL OF LICENSE**

3 (Conviction of Crimes Substantially Related to the Qualifications,
4 Functions, or Duties of a Respiratory Care Practitioner)

5 17. Respondent’s application is subject to denial under section 3752, as
6 defined by section 3750, subdivision (d), and 3752 of the Code, and Title 16 of the
7 California Code of Regulations, section 1399.370, in that Respondent has been convicted
8 of crimes substantially related to the qualifications, functions, or duties of a Respiratory
9 Care Practitioner, as more particularly described in paragraphs 18 through 40, below.

10 **The 1993 Conviction**

11 18. On or about January 8, 1993, Respondent was arrested for
12 violations of Vehicle Code section 14601.1 (a) [driving with a suspended license], Vehicle
13 Code section 23152 (a) [driving under the influence of alcohol], and Vehicle Code section
14 23152 (b) [driving with a blood alcohol level of .08% or higher].

15 19. On or about January 11, 1993, Respondent was charged in the case
16 entitled *People of the State of California v. Samuel Jerome White*, Los Angeles Superior
17 Court Case 93V00371, with the following criminal counts:

18 (a) Driving under the influence of alcohol in violation of Vehicle
19 Code section 23152(a);

20 (b) Driving with a blood alcohol level of .08% or higher in violation
21 of Vehicle Code section 23152 (b), and

22 (c) Driving with a suspended license in violation of Vehicle Code
23 section 14601.1 (a).

24 20. On or about January 11, 1993, Respondent pled nolo contendere to a
25 violation of Vehicle Code section 23152 (b) [driving with a blood alcohol level of .08% or
26 higher], in the case entitled *People of the State of California v. Samuel Jerome White*, Los
27 Angeles Superior Court Case 93V00371.

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21. On or about January 11, 1993, the Court sentenced Respondent in Case 93V00371 to sixty (60) months summary probation, serve ten (10) days in Los Angeles County Jail, and pay a fine with penalty assessments totaling \$1,053.00.

The 1994 Conviction

22. On or about June 5, 1994, Respondent was arrested for violations of Penal Code section 273.5 (a) [inflicting corporal injury on a spouse] and Penal Code section 242 [battery] .

23. On or about June 6, 1994, Respondent was charged in the case entitled *People of the State of California v. Samuel Jerome White*, Los Angeles Superior Court Case 94M02095, with the following criminal counts:

(a) Inflicting corporal punishment on a spouse in violation of Penal Code section 273.5 (a), a misdemeanor pursuant to Penal Code section 17 (B)4, and

(b) Battery in violation of Penal Code section 242, a misdemeanor.

24. On or about June 17, 1994, Respondent pled nolo contendere to a violation of Penal Code section 273.5 (a) [inflicting corporal injury on a spouse] in the case entitled *People of the State of California v. Samuel Jerome White*, Los Angeles Superior Court Case 94M02095.

25. On or about June 17, 1994, the Court sentenced Respondent in Case 94M02095 to three (3) years summary probation, serve seven (7) days in the Los Angeles County Jail, pay a fine of \$805.00 and stay away from the victim.

The 2000 Conviction

26. On or about June 20, 2000, Respondent was arrested for a violation of Penal Code section 647 (f) [public intoxication], a misdemeanor, and Health and Safety Code section 11350, subdivision (a) [possession of a controlled substance], a felony.

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1 27. On or about June 21, 2000, Respondent was charged in the case
2 entitled *People of the State of California v. Samuel Jerome White*, Los Angeles Superior
3 Court Case GA043087, with the criminal count of possessing a controlled substance in
4 violation of Health and Safety Code section 11350 (a), a felony.

5 28. On or about August 9, 2000, Respondent was granted deferred entry
6 of judgment pursuant to Penal Code section 1000.2, in the case entitled *People of the State*
7 *of California v. Samuel Jerome White*, Los Angeles Superior Court Case GA043087.

8 **The July 2002 Conviction**

9 29. On or about March 12, 2002, Respondent was arrested for a
10 violations of Penal Code section 459 [vehicle burglary] and Vehicle Code section 10851
11 [attempted auto theft].

12 30. On or about March 13, 2002, Respondent was charged in the case
13 entitled *People of the State of California v. Samuel Jerome White*, Los Angeles Superior
14 Court Case 2JM02011, with the following criminal counts:

15 (a) Attempting to take vehicle without consent in violation of
16 Vehicle Code section 664-10851 (a), a misdemeanor, and

17 (b) Tampering with a vehicle in violation of Vehicle Code section
18 10852, a misdemeanor.

19 31. On or about July 9, 2002, Respondent pled nolo contendere to a
20 violation of Vehicle Code section 10852 [tampering with a vehicle] in the case entitled
21 *People of the State of California v. Samuel Jerome White*, Los Angeles Superior Court
22 Case 2JM02011.

23 32. On or about July 9, 2002, the Court sentenced Respondent in
24 Case 2JM02011 to three (3) years summary probation, serve five (5) days in the Los
25 Angeles County Jail, pay restitution in the amount of \$100.00 and perform thirty (30) days
26 community labor.

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1 **The June 2002 Conviction**

2 33. On or about March 25, 2002, Respondent was arrested for
3 violations of Health and Safety Code section 11357 (c) [possession of greater than 28.5
4 grams of marijuana], Vehicle Code section 23152 (a) [driving under the influence of
5 alcohol], and Vehicle Code section 23152 (b) [driving with a blood alcohol level of .08%
6 or higher].

7 34. On or about, April 12, 2002, Respondent was charged in the case
8 entitled *People of the State of California v. Samuel Jerome White*, Los Angeles Superior
9 Court Case 2PM03201, with the following criminal counts:

10 (a) Driving under the influence of alcohol in violation of Vehicle
11 Code section 23152(a);

12 (b) Driving with a blood alcohol level of .08% or higher in violation
13 of Vehicle Code section 23152 (b), and

14 (c) Possession of marijuana over 28.5 grams in violation of Health
15 and Safety Code section 11357 (c).

16 35. On or about June 6, 2002, Respondent pled guilty to a violation of
17 Vehicle Code section 23152 (b) [driving with a blood alcohol level of .08% or higher], in
18 the case entitled *People of the State of California v. Samuel Jerome White*, Los Angeles
19 Superior Court Case 2PM03201.

20 36. On or about June 6, 2002, the Court sentenced Respondent in Case
21 2PM03201 to three (3) years formal probation, complete a three (3) month first conviction
22 alcohol and drug education and counseling program, and pay a fine with penalty
23 assessments totaling \$1,173.00.

24 **The 2005 Conviction**

25 37. On or about November 18, 2004, Respondent was arrested for
26 public intoxication in violation of Penal Code section 647 (f).

27 38. On or about December 1, 2004, Respondent was charged in the case
28 entitled *People of the State of California v. Samuel Jerome White*, San Bernardino

1 Superior Court Case No. MWV093624, with public intoxication, a violation of Penal
2 Code section 647 (f).

3 39. On or about April 8, 2005, Respondent pled guilty in Case No.
4 MWV093624 to public intoxication in violation of Penal Code section 647 (f).

5 40. On or about April 8, 2005, Respondent was sentenced in Case No.
6 MWV093624 to a fine in the amount of \$155.00.

7 **SECOND CAUSE FOR DENIAL OF LICENSE**

8 (Commission of a Fraudulent, Dishonest or Corrupt Act)

9 41. Respondent's application is further subject to denial under section
10 3750, as defined by section 3750, subdivision (j), in that he has committed a fraudulent,
11 dishonest or corrupt act or acts substantially related to the qualifications, functions, or
12 duties of a respiratory care practitioner, as more particularly described in paragraphs 29
13 through 32, above, which are hereby incorporated by reference and realleged as if fully set
14 forth herein.

15 **THIRD CAUSE FOR DENIAL OF LICENSE**

16 (Conviction of a Crime Involving Driving Under the Influence)

17 42. Respondent's application is further subject to denial under section
18 3750, as defined by section 3750, subdivision (d), and California Code of Regulations
19 section 1399.370, subdivision (c), in that he has been convicted of crimes involving
20 driving under the influence of alcohol, as more particularly described in paragraphs 18
21 through 21 and 33 through 36, above, which are hereby incorporated by reference and
22 realleged as if fully set forth herein.

23 **FOURTH CAUSE FOR DENIAL OF LICENSE**

24 (Possession of a Controlled Substance)

25 43. Respondent's application is further subject to denial under section
26 3750, as defined by section 3750.5, subdivision (a), in that he illegally possessed a
27 controlled substance, as more particularly described in paragraphs 26 through 28, above,
28 which are hereby incorporated by reference and realleged as if fully set forth herein.

1 **FIFTH CAUSE FOR DENIAL OF LICENSE**

2 (Conviction of a Crime Involving Bodily Injury or Attempted Bodily Injury)

3 44. Respondent's application is further subject to denial under
4 Government Code section 3752.5, in that he has been convicted of a crime involving
5 bodily injury or attempted bodily injury, as more particularly described in paragraphs 22
6 through 25, above, which are hereby incorporated by reference and realleged as if fully set
7 forth herein.

8 **PRAYER**

9 WHEREFORE, Complainant requests that a hearing be held on the matters
10 herein alleged, and that following the hearing, the Board issue a decision:

11 1. Denying the application of Respondent for a Respiratory Care
12 Practitioner License;

13 2. Directing Respondent to pay the Respiratory Care Board of
14 California the costs of the investigation and enforcement of this case, and if placed on
15 probation, the costs of probation monitoring; and

16 3. Taking such other and further action as deemed necessary and
17 proper.

18 DATED: May 6, 2009

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20 Original signed by Colleen Whitestine for:
21 STEPHANIE NUNEZ
22 Executive Officer
Respiratory Care Board of California
State of California
Complainant

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